

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD FOUNDATION
1333 H St. NW
Washington, DC 20005,

Plaintiff,

v.

CONSUMER FINANCIAL PROTECTION
BUREAU
1700 G St. NW
Washington, DC 20552,

Defendant.

Case No. 19-cv-1515

COMPLAINT

1. Plaintiff Democracy Forward Foundation brings this action against Defendant the Consumer Financial Protection Bureau (the “CFPB”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (the “FOIA”). Defendant has failed to sufficiently respond to Plaintiff’s FOIA requests for records that relate to the agency’s supervision of student loan servicers. Plaintiff therefore respectfully requests that the Court compel Defendant to comply with the FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

4. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia, and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part by educating the public on government actions and policies.

5. Defendant the CFPB is a federal agency within the meaning of the FOIA, *see* 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. The CFPB has possession, custody, and control of records to which Plaintiff seeks access.

FACTUAL ALLEGATIONS

Plaintiff's September 4, 2018 FOIA Request

6. On September 4, 2018, Plaintiff sent a FOIA request to the CFPB that requested, among other categories of records, all “[c]ommunications between (1) the CFPB Office of the Director, Eric Blankenstein, or Brian Johnson and (2) student loan originators, servicers, and collectors, or their representatives.” Ex. A at 2 (request category no. 4).¹ Plaintiff specified that “[t]he time period for this search is from November 21, 2017 to the date the search is completed.” *Id.*

7. Plaintiff sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires a fee waiver if the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See* Ex. A at 2-4.

¹ By this suit, Plaintiff is not seeking relief concerning the other categories of records that Plaintiff requested in its September 4, 2018 FOIA Request.

8. By email dated September 5, 2018, the CFPB acknowledged having received Plaintiff's September 4, 2018 FOIA request on September 4, 2018, and having assigned it request number BCFD-2018-0750-F.

Plaintiff's October 15, 2018 FOIA Request

9. On October 15, 2018, Plaintiff sent a FOIA request to the CFPB requesting the following categories of records:

1. Examination reports that include the supervision or examination of practices in connection with federal student loans.
2. Any guidance, instruction, templates, manuals, or examination procedures for CFPB staff on how or whether to conduct supervision or examinations of practices in connection with federal student loans.

Ex. B at 1. Plaintiff specified that "[t]he time period for this search is from November 21, 2017 to the date the search is conducted." *Id.*

10. Plaintiff sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires a fee waiver if the disclosure is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *See* Ex. B at 2-4.

11. By email dated May 6, 2019, the CFPB acknowledged having received Plaintiff's October 15, 2018 FOIA request on October 15, 2018, and having assigned it request number CFPB-2019-0028-F.

CLAIMS FOR RELIEF

Count One (Violation of the FOIA, 5 U.S.C. § 552, September 4, 2018 FOIA Request)

12. Plaintiff repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

13. As of the date of this Complaint, Defendant has failed to produce the category of records identified above that Plaintiff requested in its September 4, 2018 FOIA request or to demonstrate that such records are lawfully exempt from production. *See* 5 U.S.C. § 552(a)(6)(C). Nor has Defendant notified Plaintiff of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

14. By failing to respond to Plaintiff's September 4, 2018 request within the statutorily prescribed time limit, Defendant has violated its duties under the FOIA, including but not limited to its duties to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information.

15. Plaintiff is being irreparably harmed by Defendant's violation of the FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

Count Two (Violation of the FOIA, 5 U.S.C. § 552, October 15, 2018 FOIA Request)

16. Plaintiff repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

17. As of the date of this Complaint, Defendant has failed to produce all records requested by Plaintiff in its October 15, 2018 FOIA request or to demonstrate that such records are lawfully exempt from production. *See* 5 U.S.C. § 552(a)(6)(C). Nor has Defendant notified Plaintiff of the scope of any responsive records it intends to produce or withhold and the reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

18. By failing to respond to Plaintiff's October 15, 2018 request within the statutorily prescribed time limit, Defendant has violated its duties under the FOIA, including but not limited

to its duties to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information.

19. Plaintiff is being irreparably harmed by Defendant's violation of the FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA requests, as identified above, and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests;
2. order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests, as identified above, and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests, as identified above;
4. order Defendant to grant Plaintiff's requests for fee waivers;
5. grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. grant any other relief this Court deems appropriate.

Dated: May 23, 2019

Respectfully submitted,

/s/ Adam Grogg

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